

requires immediate appointment and, since the act became effective after adjournment of the Legislature, a reasonable construction requires appointment to be made immediately, subject to later confirmation upon convening of the senate.)

2. Members of the council shall take the oath of office. (G. C. Sec. 2).

3. The council shall organize and recommend to the Director of Agriculture a conservation commissioner.

4. If the recommendation of the council is acceptable to the Director of Agriculture, he shall appoint the conservation commissioner.

5. The conservation commissioner shall qualify by acceptance, taking the oath of office and giving bond, conditioned according to law, with security to be approved by the Governor in such penal sum as shall be fixed by the Governor, not less in any case than ten thousand dollars. (G. C. Sec. 154-14.)

6. The Director of Agriculture shall certify to the council that the conservation commissioner has been appointed and that he has accepted and qualified as such.

7. The Conservation Council shall deliver written notice to the office of the Governor that it has organized, that the Director of Agriculture has appointed the conservation commissioner and that he has accepted and qualified as such and that it is ready to assume its duties and exercise its powers.

When the steps enumerated have been taken, Section 1438-3, supra, provides that the functions therein enumerated, formerly vested by law in the Fish and Game Division of the Department of Agriculture and the Department of Public Works, shall be transferred to and be under the control of the Division of Conservation. The section further provides that all books, records, etc., pertaining to these functions, shall be transferred to such division.

From your communication it appears that the first three steps enumerated above have already been taken. Accordingly, before the council and the Division of Conservation become vested with the powers conferred by the bill in question, it will be necessary to complete the series of steps.

There are, of course, many matters relating to the powers and functions of the council which I have not touched upon. Doubt may exist in your mind with respect to certain of the duties of the council, but, in the absence of a specific inquiry in regard thereto, I am unable to anticipate what questions may exist. If you will submit any further questions which you have to me, I will be very glad to give consideration thereto and furnish my opinion thereon. In view of the general character of your inquiry, however, no more specific answer can be given than that hereinabove set forth.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

969.

CRABBE ACT VIOLATOR—FIRST OFFENSE—JURY TRIAL IN COMMON  
PLEAS OR PROBATE COURTS DENIED.

**SYLLABUS:**

*Under the terms of the new Code of Criminal Procedure, passed by the 88th General Assembly, which became effective July 21, 1929, a person charged with a first offense under Sections 6212-13 to 6212-20 of the General Code, commonly known as*

*the Crabbe Act, is not entitled to a trial by jury in the Probate Court or in the Common Pleas Court.*

COLUMBUS, OHIO, October 2, 1929.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—I am in receipt of your recent communication in which you ask the following question:

“Shall a judge under the new code of criminal procedure, either common pleas or probate, grant a jury trial to one accused of his first offense under the Crabbe Act?”

Sections 6212-13 to 6212-20, inclusive, of the General Code, constitute what is commonly known as the Crabbe Act. Section 6212-17 provides the penalty for violation of the Crabbe Act. The penalty provided by this section for a person convicted of a first offense is that he shall be fined not less than one hundred dollars nor more than one thousand dollars. Section 6212-18 provides, in so far as is pertinent to your inquiry, as follows:

“Any \* \* \* probate or common pleas judge within the county with whom the affidavit is filed charging a violation of the provisions of this act, when the offense is alleged to have been committed in the county in which such \* \* \* judge may be sitting, shall have final jurisdiction to try such cases upon such affidavits without a jury, unless imprisonment is a part of the penalty.”

It is a well settled doctrine in the State of Ohio, affirmed by many decisions of the courts of this state, that where a penalty imposed by a criminal statute is merely a fine, the right of trial by jury, as guaranteed by the constitution of the State of Ohio, does not apply.

*Inwood vs. State*, 42 Ohio St. 186.

*State vs. Borham*, 72 Ohio St. 358.

*Hoffrichter vs. State*, 102 Ohio St. 65.

*Stiess vs. State*, 103 Ohio St. 33.

*Cochran vs. State*, 105 Ohio St. 541.

*Wiemer vs. State*, 118 Ohio St. 129.

Section 13442-4 of the new Code of Criminal Procedure, passed by the 88th General Assembly, which became effective on July 21, 1929, provides as follows:

“In all criminal cases pending in courts of record in this state, the defendant shall have the right to waive a trial by jury, and may, if he so elect, be tried by the court without a jury. Such waiver and election by a defendant, shall be in writing, signed by the defendant and filed in said cause and made a part of the record thereof. It shall be entitled in the court and cause, and in substance as follows: ‘I \_\_\_\_\_, defendant in the above cause, hereby voluntarily waive and relinquish my right to a trial by jury, and elect to be tried by a judge of the court in which the said cause may be pending. I fully understand that under the laws of this state, I have a constitutional right to a trial by jury.’ Such waiver of trial by jury must be made in open court after the defendant has been arraigned and has had opportunity to consult with counsel. Such waiver may be withdrawn by the defendant at any time before the commencement of the trial.”

You will observe from a reading of this section that the defendant is given the right to waive a trial by jury. Since he is given the right to waive a trial by jury, it may be implied that the defendant has the right to be tried by jury unless he elects to be tried by the court. However, there is nothing in this section which extends the right of trial by jury in such cases in which the constitution of the State of Ohio does not guarantee the right of trial by jury. On the contrary, the form of the waiver provided for by the provisions of Section 13442-4, *supra*, clearly indicates that the defendant waives the right of trial by jury only in such case in which the constitution guarantees such right, for you will note that the defendant sets forth in his waiver that he waives the right of trial by jury fully understanding that under the laws of the state he has a constitutional right to trial by jury.

I do not believe that the provisions of Section 13442-4 of the new Code of Criminal Procedure give the right of trial by jury in cases where the penalty imposed is merely a fine.

Section 13425-12 of the new Code of Criminal Procedure provides as follows:

“Except as otherwise provided by statute before the Probate Court shall receive any testimony upon the trial, the defendant may demand a trial by jury, and thereupon such jury shall be subject to like challenges as jurors in like cases in the Court of Common Pleas.”

You will note that this section provides that, except as otherwise provided by statute, before the Probate Court shall receive any testimony on the trial, the defendant may demand a trial by jury.

In so far as violations of the Crabbe Act are concerned, it being provided in said act that only in cases of imprisonment is the defendant entitled to a trial by jury, it follows that the defendant is not entitled to a jury trial for a first offense of the Crabbe Act in the Probate Court. Even if Sections 13442-4 and 13425-12 of the new Criminal Code could be construed so as to give a defendant the right of a trial by jury in all criminal cases, these sections would not supersede Section 6212-18 of the General Code, because Section 6212-18 of the General Code is an act which deals with a special subject and Sections 13425-12 and 13442-4 of the new Criminal Code deal generally with all criminal cases. It is a well settled rule of statutory interpretation that where there is any repugnancy between one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the special will prevail over the general statute, and where the general statute is later, the special will be construed as remaining an exception to its terms. 36 Cyc., p. 1151.

Specifically answering your inquiry, I am of the opinion that under the terms of the new Code of Criminal Procedure, passed by the 88th General Assembly, which became effective July 21, 1929, a person charged with a first offense under Sections 6212-13 to 6212-20 of the General Code, commonly known as the Crabbe Act, is not entitled to a trial by jury in the Probate Court or in the Common Pleas Court.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*